

FBT-CV15-6048103-S

DONNA L. SOTO, ADMINISTRATRIX OF THE	:	SUPERIOR COURT
ESTATE OF VICTORIA L. SOTO et al.	:	
	:	JUDICIAL DISTRICT OF
Plaintiffs,	:	FAIRFIELD
	:	
v.	:	AT BRIDGEPORT
	:	
BUSHMASTER FIREARMS INTERNATIONAL,	:	JULY 5, 2016
LLC, et al.	:	
Defendants.	:	

MOTION FOR PROTECTIVE ORDER

Defendants, Remington Arms Company, LLC and Remington Outdoors Company, Inc. (“Remington”) move pursuant to Practice Book Section 13-5 for entry of an order providing that certain limited categories of proprietary commercial information disclosed in discovery be protected from disclosure to the public and business competitors. Remington submits that good cause exists for entry of the proposed protective order attached to this motion as Exhibit A.

1. Plaintiffs have alleged that Remington’s manufacturing, sales and marketing activities relating to certain firearms were in violation of the Connecticut Unfair Trade Practices Act (“CUTPA”), and that its sale of the firearm involved in the shooting was an act of negligent entrustment.

2. Plaintiffs have requested from Remington in discovery certain documents and information that is proprietary commercial information, which if publically disclosed would cause financial harm to Remington and would be of value to its competitors (“confidential information”). The confidential information requested includes: (1) personal identifying information as defined in Practice Book Section 4-7, and including party and witness residential addresses; (2) proprietary market research conducted by or on behalf of a defendant concerning

the product marketplace, product marketing, branding and promotion, and consumer satisfaction and demographics; (3) proprietary marketing, branding, promotional and sales strategies; (4) the number of firearms manufactured or sold by a defendant by specific model designations; (5) non-retail product pricing; (6) firearm design drawings and engineering specifications; and (7) written agreements to which a defendant is a party containing non-disclosure or confidentiality provisions. Plaintiffs have also requested documents from defendants that may reflect the names, addresses and other personal identifying information of firearm purchasers disclosed on firearm sale transaction forms and other records required to be kept and maintained by federal firearms licensees under 27 CFR §§ 478.123, 478.124, 478.124a, 478.125 and 478.126a.

3. The proposed protective order is not a “blanket” or “umbrella” protective order. Rather, it applies to specifically designated categories of confidential information, which impact the privacy interests of third parties or are plainly proprietary to Remington and would have economic value if disclosed to Remington’s competitors. *See Print Source, LTD v. Lighthouse Litho, LLC*, 2013 Conn. Super. LEXIS 541, *12 (Conn. Super. Mar. 8, 2013) (pricing information has long been recognized as confidential business information); *Irzarry v. M.L. Moskowitz & Co.*, 2011 Conn. Super LEXIS 2055, *6-7 (Conn. Super. Aug. 12, 2011) (finding good cause to maintain confidentiality of agreements containing confidentiality provisions); *Convalve, Inc. v. Compaq Computer Corp.*, 2011 U.S. Dist LEXIS 152762 (S.D.N.Y. Oct. 6, 2011) (recognizing that confidential marketing research, advertising and marketing strategy, plans and techniques constitute trade secrets); *Nutratech, Inc. v. Syntech Int’l*, 242 F.R.D. 552, 555 (C.D. Cal. 2007) (holding that sales information and revenue when disclosed to a competitor must be limited to attorney’s eyes only). Disclosure of confidential information in these categories to the public generally and Remington’s competitors, specifically, will directly harm

Remington both competitively in the marketplace and financially. *See* Affidavit of Robert McCanna, Remington Senior Vice President of Sales and Marketing, attached as Exhibit B.

4. The proposed protective order also protects the privacy interests of third parties who own firearms. Connecticut law recognizes that the names and addresses of firearm owners is confidential information that should not be publically disclosed. Conn. Gen. Stat. § 29-28(d); *see also Peruta v. Freedom of Information Act Comm'n*, 157 Conn. 684, 693 (2015) (The names and addresses of applicants for permits to carry handguns are exempt from disclosure under the Connecticut FOIA).

5. Discovery materials exchanged among parties, but not filed with the court are not open to the public. *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 36 (2008). The principles underlying public access to court documents are inapplicable to such material. *Id.* (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32 (1984) (“A litigant has no first amendment right of access to information made available only for the purpose of trying his suit.”)).

6. The proposed protective order is a typical, provisional protective order governing the disclosure of material exchanged in pre-trial discovery among parties to a civil lawsuit. It does not deprive plaintiffs of access to confidential information, and does not unreasonably burden plaintiffs’ ability to prosecute their case. Rather, it contains typical and reasonable limitations on the persons who may have access to confidential information and standard provisions on how confidential information will be dealt with in deposition testimony. The proposed protective order also contains protocol by which objections to confidential information designations are to be made by the parties, placing the burden on the party designating

information as confidential to file a motion and bear the burden of proving the confidential designation is appropriate.

7. The proposed protective order also does not limit the Court's use of confidential information for judicial purposes, does not require that documents in the court record containing confidential information be destroyed at the conclusion of the case, and does not attempt to bind non-parties to the personal jurisdiction of the Court. *See Langerman v. John Morganti & Sons, LLC*, 2003 Conn. Super LEXIS 2607, *4 (Conn. Super. Sept. 18, 2003). And although the proposed protective order requires that a designating party be given notice before confidential information is filed with the Court, it does not in any way change the obligations owed by the parties under Practice Book Section 11-20A (Sealing Files or Limiting Disclosure of Documents in Civil Cases).

8. Co-defendants Camfour, Inc. and Riverview Sales, Inc. have consented to entry of Remington's proposed protective order. Plaintiffs have not given their consent.

9. Accordingly, Remington respectfully requests the entry of the attached proposed order, and for any further or additional relief that the Court deems appropriate.

Dated: July 5, 2016.

THE DEFENDANTS,

REMINGTON ARMS CO., LLC and
REMINGTON OUTDOOR COMPANY, INC.

BY: /s/ Scott M. Harrington/#307196

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed on July 5, 2016 to the following counsel:

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Exhibit A

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DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO et al.	:	SUPERIOR COURT
	:	
Plaintiffs,	:	JUDICIAL DISTRICT OF FAIRFIELD
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v,	:	AT BRIDGEPORT
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BUSHMASTER FIREARMS INTERNATIONAL, LLC, et al.	:	JULY 5, 2016
	:	
Defendants.	:	

PROPOSED PROTECTIVE ORDER

The following order (“Protective Order”) is entered pursuant to Practice Book Sections 13-5(7) for the protection against public disclosure of certain proprietary trade secrets, confidential research, business strategies, and commercial information and other information affecting the privacy interests of non-parties, which are disclosed during discovery in this case. This Protective Order does not protect against public disclosure of information and documents filed with the Court. The Court finds that good cause exist for entry of this Protective Order.

Definitions

1. The following definitions apply to this Protective Order:
 - (a) The term “document” or “documents” has the same meaning as in Practice Book Section 13-1(c)(2).
 - (b) The term “trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from its

disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Conn. Gen. Stats. § 35-51(d).

Confidential Information

2. Information, documents and material in the following categories are designated as Confidential Information under the terms of this Protective Order:

- (a) Personal identifying information as defined in Practice Book Section 4-7, and including party and witness residential addresses;
- (b) Proprietary market research conducted by or on behalf of a defendant concerning the product marketplace, product marketing, branding and promotion, and consumer satisfaction and demographics;
- (c) Proprietary marketing, branding, promotional and sales strategies;
- (d) The number of firearms manufactured or sold by a defendant by specific model designations;
- (e) Non-retail product pricing;
- (f) Firearm design drawings and engineering specifications;
- (g) Written agreements to which a defendant is a party containing non-disclosure or confidentiality provisions; and
- (h) The names, addresses and other personal identifying information of firearm purchasers disclosed on firearm sale transaction forms and other records required to be kept and maintained by federal firearms licensees under 27 CFR §§ 478.123, 478.124, 478.124a, 478.125 and 478.126a.

The parties reserve the right to request, by motion, that additional information requested and produced in discovery be designated by the Court as Confidential Information.

Purpose

3. This Protective Order shall govern the use and dissemination of all information, documents or materials that are produced by the parties in this action and designated as Confidential Information in accordance with the terms of this Protective Order. This Protective Order is not intended to address or govern claims of work product or privilege that may be asserted by any of the parties, except as otherwise provided in this Protective Order.

Designation and Treatment

4. Any party to this action who produces or supplies information, documents or other materials in this action (hereinafter the "Designating Party") may designate as "Confidential Information" any information, document or material that falls within the categories set forth in paragraph 2 of this Protective Order. The designation of "Confidential Information" shall be made by affixing on the document or material containing such information, and upon each page so designated if practicable, words that in substance state, "**CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.**" Any material, document or information for which it is impracticable to affix such a legend may be designated by written notice to that effect with a reasonable description of the material in question. Third parties may take advantage of the provisions of this Protective Order by indicating in writing to the requesting party their intent to comply with its procedures or they may seek separate protection from the Court.

5. At the option of the Designating Party, and to facilitate prompt discovery by allowing inspection or review before formal designation in the manner specified above, all information, material or documents produced in response to a subpoena or discovery request shall be treated as Confidential Information pending inspection and copying. Subject to paragraph 18 of this Protective Order, copies of information, material, and documents selected

for copying and reproduced for the inspecting party will lose their status as Confidential Information unless delivered with the necessary legend.

6. All persons having access to Confidential Information shall maintain it in a safe and secure manner to ensure compliance with this Protective Order. Any summary, extract, paraphrase, quotation, restatement, compilation, notes or copy containing Confidential Information, or any electronic image or database containing Confidential Information, shall be subject to the terms of this Protective Order to the same extent as the material or information from which such summary, extract, paraphrase, quotation, restatement, compilation, notes, copy, electronic image, or database is derived.

7. A Designating Party may in good faith redact non-responsive and/or irrelevant Confidential Information from any document or material. However, unredacted copies of such documents shall be maintained by the Designating Party. Designated attorneys for a Discovering Party and, if necessary, qualified Experts under paragraph 10(c) retained by them, shall have access to the unredacted versions of the documents at a place of the Designating Party's choosing but only for the purpose of ascertaining the appropriateness of any redactions.

8. This Protective Order shall not protect from disclosure information, documents or other material that (a) the Designating Party has not made reasonable efforts to keep confidential; (b) has been produced in any other action or proceeding without confidentiality protection, except inadvertently produced documents; (c) has been lawfully obtained by and from another source; or (d) has been denied confidential treatment in any other action or proceeding by a final order as to which all appeals and other opportunities to challenge have been exhausted or for which the time for appealing or otherwise challenging has expired.

Limitations on Use

9. Except to the extent expressly authorized by this Protective Order, Confidential Information shall not be used or disclosed for any purpose other than the preparation and trial of this case and in any appeal taken from any order or judgment herein. Nothing designated as Confidential Information shall be used for any commercial, business, marketing, competitive, personal, or other purposes whatsoever.

Limitations on Disclosure

10. Except with the prior written consent of the Designating Party, or as expressly authorized by this Protective Order, no person receiving Confidential Information may disclose it to any other person. Nothing in this Protective Order, however, shall be deemed to restrict in any manner the Designating Party's use of its own Confidential Information or the Court's use of Confidential Information for any appropriate judicial purpose. Each party may disclose its own Confidential Information without regard to this Protective Order, unless otherwise prohibited from doing so. Each party may waive previously asserted designations of Confidential with notice to all parties.

11. Access to Confidential Information shall be limited to the following categories of persons ("Qualified Persons):

- (a) All counsel of record, including staff persons employed by such counsel;
- (b) The parties, but only to the extent reasonably necessary to the litigation of this case;
- (c) Any consultant, investigator or expert (collectively "Expert") who is assisting in the preparation and/or trial of this action, but only to the extent reasonably necessary to enable such Expert to render such assistance;

(d) Any deponent or witness who is reasonably believed to have been eligible to have access to Confidential Information by virtue of his or her employment or other affiliation with the Designating Party;

(e) Court reporters, videographers and outside vendors performing litigation support services for parties in this case; and

(f) The Court and its personnel.

12. Any person to whom Confidential Information may be disclosed pursuant to this Protective Order, except counsel of record identified in this Protective Order, staff persons employed by such counsel, this Court and its personnel, shall first have an opportunity to read a copy of this Protective Order and shall agree in writing to the non-disclosure terms of the Confidentiality Acknowledgment annexed hereto as Exhibit A (“Confidentiality Acknowledgment”) before receiving any Confidential Information. Only counsel of record may disclose Confidential Information to another Qualified Person and they must receive the signed Confidentiality Acknowledgment before disclosing the Confidential Information to any Qualified Person other than other Counsel of Record, staff persons employed by such counsel, this Court and its personnel. Counsel for the party obtaining a person’s signature on the Confidentiality Acknowledgment shall retain the original signed acknowledgment until such time as the identity of the signatory is disclosed or until good cause for earlier disclosure of the acknowledgment is shown.

13. If a party or other person receiving Confidential Information pursuant to this Protective Order thereafter receives a subpoena or order to produce such information in any other action or proceeding before any other court or agency, such party or person shall, if there are fewer than ten (10) days to comply, immediately, if possible, or within two (2) days if not, or if

there are more than ten (10) days, at least seven (7) court days prior to the due date of compliance, notify the Designating Party of the pendency of the subpoena, public records request or order in writing. To give the Designating Party an opportunity to obtain such relief, the party or person from whom the information is sought shall not make the disclosure before the actual due date of compliance set forth in the subpoena or order.

Depositions Involving Confidential Information

14. Depositions involving Confidential Information shall be treated, as follows:

(a) Portions of a deposition or depositions in their entirety may be designated Confidential Information by counsel for the deponent or the Designating Party, with respect to documents or information that it has produced, by requesting such treatment on the record at the deposition or in writing no later than ten (30) days after the date of the deposition.

(b) This Protective Order shall permit temporary designation of an entire transcript as Confidential Information where less than all of the testimony in that transcript would fall into those categories, subject to the following procedure:

(i) The court reporter shall include on the cover page a clear indication that the deposition has been so designated.

(ii) Within ten (30) days of receipt of the final, unsigned deposition transcript by counsel for the Designating Party, such counsel shall advise opposing counsel and the court reporter of the pages, lines and exhibits (if such exhibits are not otherwise so designated) in which Confidential Information appears. The court reporter shall supplement the transcript to indicate the designations. Failure to particularize a designation to opposing counsel within the allotted time shall result in the loss of any designation and shall entitle recipients of the deposition to treat the transcript as non-confidential.

(iii) If a party objects to a page, line, and exhibit designation made pursuant to paragraph 13(b)(ii) of this Order, the party may make an objection using the procedure provided in paragraph 17 of this Order and the procedures of paragraph 17 shall apply to resolution of the objection. The designations shall remain effective until and unless an objection is made and finally resolved.

15. No one may attend, or review the transcripts of, the portions of any depositions at which Confidential is shown or discussed, other than persons authorized to receive access to Confidential Information.

Filing or Use of Confidential Information as Evidence

16. No party shall file any Confidential Information or information derived therefrom with the Court unless necessary to the resolution of a contested issue and then, only to the most limited extent possible regarding the amount of Confidential Information to be filed. Whenever possible, a representative example of a type of Confidential Information shall be filed, and/or all sections of the Confidential Information not necessary to the Court's resolution of the contested issue shall be redacted. Before any Confidential Information or information derived therefrom is filed with the Court, the party or parties intending to file such information shall notify the designating party of their intention to file such information fourteen (14) days before filing the information. The notice to the designating party shall include specific descriptions of the information to be filed. The designating party shall promptly file an appropriate motion under Practice Book Section 11-20A requesting that the information be filed under seal. No Confidential Information or information derived therefrom shall be filed with the Court until such time that the Court has ruled on the designating party's motion under Practice Book Section 11-20A.

Objections to Designations

17. Any party may, not later than sixty (60) days prior to the trial of this case, object to a designation by notifying the Designating Party in writing of that objection and specifying the designated material to which the objection is made. The parties shall confer within fifteen (15) days of service of any written objection. If the objection is not resolved, the Designating Party shall, within fifteen (15) days of the conference, file and serve a motion to resolve the dispute and shall bear the burden of proof on the issue. If no such motion is filed within the stated time period, the material shall cease to be treated as Confidential. If a motion is filed, information subject to dispute shall be treated consistently with its designation until further order of the Court. With respect to any material which is re-designated or ceases to be subject to the protection of this Protective Order, the Designating Party shall, at its expense, provide to each party which so requests additional copies thereof from which all confidentiality legends affixed hereunder have been adjusted to reflect the re-designation or removed as appropriate.

Inadvertent Waiver

18. Inadvertent failure to designate any information pursuant to this Protective Order shall not constitute a waiver of any otherwise valid claim for protection, so long as such claim is asserted within fifteen (30) days of the discovery of the inadvertent failure. At such time, arrangements shall be made for the Designating Party to substitute properly labeled copies. However, until the receiving party is notified that the information is designated as Confidential Information, the receiving parties shall be entitled to treat the material as non-confidential.

19. In the interest of expediting discovery in these proceedings and avoiding unnecessary costs: (1) inadvertent disclosure in this litigation of privileged information and/or work product shall not constitute a waiver of any otherwise valid claim of privilege, immunity,

or other protection; and (2) failure to assert a privilege and/or work product in this litigation as to one document or communication shall not be deemed to constitute a waiver of the privilege, immunity, or protection as to any other document or communication allegedly so protected, even involving the same subject matter. In the case of inadvertently produced privileged and/or work product documents, upon request of the Producing Party, the documents together with all copies thereof and any notes made therefrom shall be returned forthwith to the party claiming privilege and/or work product immunity. Any party may, within five (5) court days after notification of inadvertent disclosure under this Paragraph, object to the claim of inadvertence by notifying the Designating/Producing Party in writing of that objection and specifying the designated/produced material to which the objection is made. The parties shall confer within fifteen (15) days of service of any written objection. If the objection is not resolved, the Designating Party shall, within fifteen (15) days of the conference, file and serve a motion to resolve the dispute and shall bear the burden of proof on the issue. If a motion is filed, information subject to dispute shall be treated consistently with the Designating/Producing Party's most recent designation until further order of the Court.

Non-Termination

20. Any information or documents designated as Confidential Information shall continue to be treated as such until such time as (a) the Designating Party expressly agrees in writing that the information, documents, testimony or other materials in question are no longer Confidential or (b) there is a finding by the Court that the information or documents are not the proper subject of protection under this Protective Order. Issues regarding the protection of Confidential Information during trial may be presented to the Court as each party deems appropriate.

21. The obligations and protections imposed by this Protective Order, as to any documents not admitted into evidence at trial unless sealed by the Court, shall continue beyond the conclusion of this action, including any appeals, or until the Court orders otherwise. Within sixty (30) days after receipt of a request from the Designating Party, made after this action has concluded and the time for possible appeal has been resolved, Confidential Information (other than exhibits at the official court of record) shall be destroyed, permanently deleted or returned to the appropriate Designating Party. Counsel for any party or third party receiving Confidential Information in this action shall make written certification of compliance with this provision and shall deliver the same to counsel for each Designating Party within ninety (60) days after such request.

Continuing Jurisdiction

22. Any party may petition the Court for a modification of the terms of this Protective Order for good cause shown, after notice and opportunity for a hearing. This Court shall have continuing jurisdiction to modify, amend, enforce, interpret or rescind this Protective Order notwithstanding the termination of this action.

Dated: Bridgeport, Connecticut

_____, 2016

Hon. Barbara Bellis

EXHIBIT A

FBT-CV15-6048103-S

DONNA L. SOTO, ADMINISTRATRIX OF THE
ESTATE OF VICTORIA L. SOTO et al.

Plaintiffs,

v.

BUSHMASTER FIREARMS INTERNATIONAL,
LLC, et al.

Defendants.

: SUPERIOR COURT
:
: JUDICIAL DISTRICT OF
: FAIRFIELD
:
: AT BRIDGEPORT

CONFIDENTIALITY AGREEMENT

The undersigned hereby acknowledges and agrees:

1. I am aware that a Protective Order has been entered in the above-captioned action. I have had the opportunity to read the Protective Order and understand that my willful disclosure of Confidential Information may constitute contempt of court.
2. I will not disclose copies of any Confidential Information to any other person, and will not discuss any Confidential Information with any person except those persons described in the Protective Order under the procedures therein specified.

Name: _____

Address: _____

Telephone No.: _____

Dated: _____

Exhibit B

research to develop and assess overall business and marketing strategies, and has only disclosed it to persons within the company who are involved in making strategic business decisions. The research was undertaken at considerable expense and has economic value to Remington. The research would also have economic value to Remington's competitors in the modern sporting rifle market place and, if disclosed to those competitors, could be used to Remington's competitive disadvantage.

6. The total number of modern sporting rifles manufactured and sold by Remington on an annual basis is not publically disclosed, nor is the number of rifles by specific model. Remington considers this information to be proprietary. These figures are not widely disseminated within the company but only seen by those who need to be aware of them for financial planning, production planning and strategic marketing purposes. If disclosed to Remington's competitors these figures could be used by them to focus their production and marketing efforts in areas where they believe opportunities exist to increase market share.

7. The prices at which Remington sells its products to wholesale distributors and certain retail dealers is considered by Remington to be proprietary. Remington customers are required to annually sign non-disclosure agreements that prohibit sharing of pricing information with competitors. If Remington's competitors were to learn those prices, they could use the information to their competitive advantage by underselling Remington or otherwise offering commercially advantageous terms to Remington's customers. Persons within the company who are aware of the prices at which Remington sells its products are limited to those who are required to know those prices in order to perform their job responsibilities. In addition pricing strategies are in place for selling to different channels of distribution in the industry and if

Remington's competition were to understand the strategy, it would allow them to target specific channels to attack Remington business.

8. Firearm design drawings and engineering specifications relating to Remington products are considered by Remington to contain proprietary information. Disclosure of these drawings and specifications to Remington's competitors would be economically valuable to them and potentially put Remington in a competitively disadvantaged position. Product design drawings and engineering specifications are only available to persons at Remington who are involved in the design and production of Remington products.

9. Remington has entered into certain written agreements with third parties that contain confidentiality provisions, which, if breached, entitle third parties to legal remedies against Remington. Public disclosure of these agreements by Remington would be in breach of the agreements and would economically harm Remington.

FURTHER AFFIANT SAYETH NOT.



ROBERT McCANNA

Subscribed and sworn to before me,
the undersigned officer, this 28th day
of June, 2016.


Notary Public